

**Before the  
Federal Communications Commission  
Washington, D.C. 20554**

|   |   |                           |
|---|---|---------------------------|
| In the Matter of                                  | ) |                           |
|   | ) |                           |
| Seggi Broadcasting of Florida, Inc.               | ) |                           |
|   | ) | File Number EB-02-TP-252  |
| Owner of Antenna Structures #1028463 and #1028464 | ) |                           |
|   | ) | NAL/Acct. No.200232700013 |
| Lake Wales, Florida                               | ) |                           |
|   | ) | FRN 0007-1134-83          |

**NOTICE OF APPARENT LIABILITY FOR FORFEITURE**

**Released:** June 20, 2002

By the Enforcement Bureau, Tampa Office:

**I. INTRODUCTION**

1. In this Notice of Apparent Liability for Forfeiture, we find that Seggi Broadcasting of Florida, Inc., (“Seggi”), owner of antenna structures #1028463 and #1028464 at Lake Wales, Florida, willfully and repeatedly violated Sections 17.4(g), 17.23, 17.50 and 17.51 of the Commission's Rules (“Rules”),<sup>1</sup> by failing to display Antenna Structure Registration (“ASR”) numbers, failing to provide obstruction lighting as prescribed by the Commission’s station authorization and ASR Form 854R, failing to maintain good visibility of the required antenna structure paint, and failing to exhibit all red obstruction lighting from sunset to sunrise. We find Seggi Broadcasting of Florida, Inc., apparently liable for forfeiture in the amount of twenty-four thousand dollars (\$24,000).

**II. BACKGROUND**

2. On April 30, 2002, two agents from the FCC Enforcement Bureau’s Tampa Field Office (“Tampa Office”) observed that all lights on Seggi’s two antenna structures #1028463 and #1028464 at Lake Wales, Florida, used as part of AM radio station WIPC, were unlit after local sunset. The agents contacted the area Federal Aviation Administration (“FAA”) Flight Service Station and determined that no report of a light outage for these two structures had been made.

3. On May 2, 2002, two agents from the Tampa Office inspected radio station WIPC(AM).<sup>2</sup> The general manager for WIPC stated that she had been aware of the light outages for at least two weeks and had received estimates to make repairs. The general manager stated that no report of the light outage had

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<sup>1</sup> 47 C.F.R §§ 17.4(g), 17.23, 17.50 and 17.51.

<sup>2</sup> Seggi is the owner of the antenna structures in addition to being licensee of radio station WIPC (AM).

been made to the FAA. The general manager stated that the station did not keep a log of tower light observations. The agents observed that only one of the station's two towers had obstruction lighting installed. Furthermore, the paint on both towers was severely chipped and faded. The inspection also revealed that ASR numbers were not posted at or near either antenna tower base.

### III. DISCUSSION

4. Section 17.4(g) of the Rules requires ASR Numbers to be displayed in a conspicuous place so that they are readily visible near the base of antenna structures. On May 2, 2002, two agents observed that the ASR numbers were not posted at the bases of Seggi's two antenna towers #1028463 and #1028464. The Commission cited Seggi for this same violation on May 5, 1999. Section 17.23 of the Rules states that unless otherwise specified by the Commission, each new or altered antenna structure to be registered on or after January 1, 1996, must conform to the FAA's painting and lighting recommendations. The Commission's FCC Form 854R antenna structure registration and terms of the station authorization both specify that each tower shall be painted and lighted in accordance with FAA specifications. On May 2, 2002, one of Seggi's towers had no lighting installed. The Commission cited Seggi for this same violation on January 28, 1991. Section 17.50 of the Rules states that antenna structures requiring painting shall be cleaned or repainted as often as necessary to maintain good visibility. On May 2, 2002, the paint on both of Seggi's towers was badly faded and chipped. Section 17.51 of the Rules requires that all red obstruction lighting shall be exhibited from sunset to sunrise unless otherwise specified. On April 30, 2002, Seggi failed to exhibit obstruction lights on its tower between sunset and sunrise. In addition, on May 2, 2002, Seggi admitted it had known of the light outage for at least two weeks prior to that date and that no report of the light outage had been made to the FAA.

5. Based on the evidence before us, we find that Seggi willfully<sup>3</sup> and repeatedly<sup>4</sup> violated Sections 17.4(g), 17.23, 17.50 and 17.51 of the Rules by failing to display the ASR numbers, failing to provide prescribed obstruction lighting, failing to maintain good visibility of the antenna structure markings, and failing to exhibit red obstruction lights from sunset to sunrise.

6. Pursuant to Section 1.80(b)(4) of the Rules,<sup>5</sup> the base forfeiture amount for failure to comply with prescribed lighting and marking is \$10,000. The Rules do not establish a base forfeiture amount for failure to post the antenna structure registration number.<sup>6</sup> The Commission has determined, however, that

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<sup>3</sup> Section 312(f)(1) of the Act, 47 U.S.C. § 312(f)(1), which applies to violations for which forfeitures are assessed under Section 503(b) of the Act, provides that "[t]he term 'willful', when used with reference to the commission or omission of any act, means the conscious and deliberate commission or omission of such act, irrespective of any intent to violate any provision of this Act ...." See *Southern California Broadcasting Co.*, 6 FCC Rcd 4387 (1991).

<sup>4</sup> The term "repeated," when used with reference to the commission or omission of any act, "means the commission or omission of such act more than once or, if such commission or omission is continuous, for more than one day." 47 U.S.C. § 312(f)(2).

<sup>5</sup> 47 C.F.R. § 1.80(b)(4).

<sup>6</sup> See The Commission's Forfeiture Policy Statement and Amendment of Section 1.80 of the Rules to Incorporate the Forfeiture Guidelines ("Forfeiture Policy Statement"), 12 FCC Rcd 17087 (1997), recon. denied 15 FCC Rcd 303 (1999). The Forfeiture Policy Statement states that "... any omission of a specific rule violation from the ... [forfeiture guidelines] ... should not signal that the Commission considers any unlisted violation as nonexistent or unimportant.

an appropriate base forfeiture amount for failure to post the ASR number is \$2,000 per violation.<sup>7</sup> In assessing the monetary forfeiture amount, we must also take into account the statutory factors set forth in Section 503(b)(2)(D) of the Communications Act of 1934, as amended, which include the nature, circumstances, extent, and gravity of the violation, and with respect to the violator, the degree of culpability, any history of prior offenses, ability to pay, and other such matters as justice may require.<sup>8</sup> Considering the entire record and applying the factors listed above, this case warrants a \$12,000 forfeiture for each of Seggi's two towers, for a total forfeiture of \$24,000.

#### IV. ORDERING CLAUSES

7. Accordingly, IT IS ORDERED THAT, pursuant to Section 503(b) of the Act,<sup>9</sup> and Sections 0.111, 0.311 and 1.80 of the Rules,<sup>10</sup> Seggi Broadcasting of Florida, Inc., is hereby NOTIFIED of its APPARENT LIABILITY FOR A FORFEITURE in the amount of twenty-four thousand dollars (\$24,000) for willful violation of Section 17.4(g), 17.23, 17.50 and 17.51 of the Rules, by failing to display Antenna Structure Registration numbers, failing to provide obstruction lighting as prescribed by the station authorization and ASR Form 854R, failing clean and repaint antenna structures to maintain good visibility, and failing to exhibit all red obstruction lighting from sunset to sunrise.

8. IT IS FURTHER ORDERED THAT, pursuant to Section 1.80 of the Commission's Rules, within thirty days of the release date of this NOTICE OF APPARENT LIABILITY, Seggi Broadcasting of Florida, Inc., SHALL PAY the full amount of the proposed forfeiture or SHALL FILE a written statement seeking reduction or cancellation of the proposed forfeiture.

9. Payment of the forfeiture may be made by mailing a check or similar instrument, payable to the order of the Federal Communications Commission, to the Forfeiture Collection Section, Finance Branch, Federal Communications Commission, P.O. Box 73482, Chicago, Illinois 60673-7482. The payment should note the NAL/Acct. No. and FRN referenced above. Requests for payment of the full amount of this Notice of Apparent Liability under an installment plan should be sent to: Chief, Revenue and Receivables Operations Group, 445 12th Street, S.W., Washington, D.C. 20554.<sup>11</sup>

10. The response, if any, must be mailed to Federal Communications Commission, Office of the Secretary, 445 12<sup>th</sup> Street SW, Washington DC 20554, Attn: Enforcement Bureau-Technical & Public Safety Division and MUST INCLUDE THE NAL/Acct. No. referenced above.

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Forfeiture Policy Statement, 12 FCC Rcd at 17099. The Commission retains the discretion, moreover, to depart from the Forfeiture Policy Statement and issue forfeitures on a case-by-case basis, under its general forfeiture authority contained in Section 503 of the Act. *Id.*

<sup>7</sup> *American Tower Corporation*, 16 FCC Rcd 1282 (2001).

<sup>8</sup> 47 U.S.C. § 503(b)(2)(D).

<sup>9</sup> 47 U.S.C. § 503(b).

<sup>10</sup> 47 C.F.R. §§ 0.111, 0.311, 1.80.

<sup>11</sup> *See* 47 C.F.R. § 1.1914.

11. The Commission will not consider reducing or canceling a forfeiture in response to a claim of inability to pay unless the petitioner submits: (1) federal tax returns for the most recent three-year period; (2) financial statements prepared according to generally accepted accounting practices ("GAAP"); or (3) some other reliable and objective documentation that accurately reflects the petitioner's current financial status. Any claim of inability to pay must specifically identify the basis for the claim by reference to the financial documentation submitted.

12. IT IS FURTHER ORDERED THAT a copy of this NOTICE OF APPARENT LIABILITY shall be sent by regular and Certified Mail Return Receipt Requested to Seggi Broadcasting of Florida, Inc., 2000 Universal Studios Suite 604, Orlando, Florida 32819.

FEDERAL COMMUNICATIONS COMMISSION

Ralph M. Barlow  
District Director – Tampa Office  
Enforcement Bureau